

**R590. Insurance, Administration. Effective 3-10-98****R590-132. Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection.****R590-132-1. Authority, Purpose and Scope.**

This rule is promulgated by the Insurance Commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers.

The purpose of this rule is to identify and restrict certain underwriting, classification, or declination practices regarding HIV infection, that the commissioner finds are or would be unfairly discriminatory if engaged in. This rule also provides guidelines for the confidentiality of AIDS related testing, which, if not followed, would be unfairly discriminatory or hazardous to members of the insuring public.

This rule applies to every licensee authorized to engage in the business of insurance in Utah under Title 31A of the Utah Code.

**R590-132-2. Definitions.**

For the purpose of this rule, the commissioner adopts the definitions set forth in Section 31A-1-301 and in addition the following:

A. HIV infection is defined as the presence of Human Immunodeficiency Virus (HIV) in a person as detected by the following;

1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.
2. Presence of HIV antigen.
3. Isolation of HIV.
4. Demonstration of HIV proviral DNA.

**R590-132-3. Rule.**

A. Persons with HIV infection will not be singled out for either unfairly discriminatory or preferential treatment for insurance purposes.

B. To properly classify risks related to covering prospective insureds, insurers may require reasonable testing. Application questions must conform to the following guidelines:

1. No inquiry in an application for health or life insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation.

2. Sexual orientation may not be used in the underwriting process or in the determination of insurability.

C. When used, the testing of insurance applicants must not be administered on an unfair basis. If a prospective insured is to be declined or rated substandard because of HIV infection, such action must be based on appropriate confirmatory tests.

D. Notice and Consent. No person engaged in the business of insurance shall require an HIV test of an individual in connection with an application for insurance unless the individual signs a written release on a form which contains the following information:

1. A statement of the purpose, content, use and meaning of the test.
2. A statement regarding disclosure of the test results, including information explaining the effect of releasing information to a person directly engaged in the business of insurance. The applicant should be advised that the insurer may disclose test results to others involved in the underwriting and claims review processes. If the HIV test is positive, the results will be reported by those conducting the test or providers receiving test results to the local health department. If the applicant does not designate a physician or other health care provider, the insurer shall report a positive test result to the local health department. If the insurer is a member of the Medical Information Bureau ("MIB, Inc.") the insurer may report the test results to MIB, Inc. in a generic code which signifies only non-specific test abnormalities.
3. A provision where the applicant directs that any positive screen results be reported to a designated health care professional of his/her choice for post-test counseling.

For purposes of this section, insurers will use the following notice and consent disclosure form or a form that contains similar language. Such form is not considered part of the policy or policy application.

**TABLE****Illustrative HIV Testing Informed Consent Form**

EXAMINER .....	INSURER .....
ADDRESS .....	ADDRESS .....
.....	.....
.....	.....

**NOTICE AND CONSENT FOR TESTING  
WHICH MAY INCLUDE AIDS VIRUS (HIV) ANTIBODY/ANTIGEN TESTING**

To determine your insurability, the insurer named above (the insurer) is requesting that you provide a sample of your blood and/or other bodily fluid for testing and analysis. In order to adequately perform all testing procedures, it may be necessary for you to provide a sample of more than one of these bodily fluids. All tests will be performed by a licensed laboratory.

Unless precluded by law, tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS virus. The HIV antibody test performed is actually a series of tests done by a medically accepted procedure. The HIV antigen test directly identifies AIDS viral particles. These tests are extremely reliable. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats), screening for liver or kidney disorders, diabetes, immune disorders, and other physical conditions.

All test results will be treated confidentially. They will be reported by the laboratory to the insurer. When necessary for business reasons in connection with insurance you have or had applied for with the insurer, the insurer may disclose test results to others such as its affiliates, reinsurers, employees, or contractors. If the insurer is a member of the Medical Information Bureau (MIB, Inc.), and should the insurer request an additional sample of bodily fluid for further testing, and you choose to decline that request, your declination to be tested will be reported to the MIB, Inc. Regardless of the number of tests requested, if the final test results for HIV antibodies/antigens are other than normal, the insurer will report to the MIB, Inc. a generic code which signifies only a non-specific abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc. in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There will be no other disclosure of test results or even that the tests have been done except as may be required or permitted by law or as authorized by you.

If your HIV test results are normal, no routine notification will be sent to you. If the HIV test results are other than normal, the insurer will contact you. The insurer may also contact you if there are other abnormal test results which, in the insurer's opinion, are significant. The insurer may ask you for the name of a physician or other health care provider to whom you may authorize disclosure and with whom you may wish to discuss the results. The laboratory, physician or other health care provider will report positive test results to the Health Department. If you have not designated a physician or other health care provider to receive disclosure of positive test results, the insurer will report positive test results to the health department.

Positive HIV antibodies/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium

may be charged, or that other policy changes may be necessary.

I have read and I understand this notice and consent for testing which may include HIV

antibodies/antigen testing. I voluntarily consent to the withdrawal from me of blood and/or other bodily fluid, the testing of that blood and/or other bodily fluid, and the disclosure of the test results as described above.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

.....  
Proposed Insured

.....  
Date of Birth

.....  
Signature of Proposed Insured

.....  
Date

.....  
State of Residence

.....  
Designated Physician or Health Care Provider  
that is to Receive Positive Test Results

.....  
Street Address

.....  
City

State

Zip

#### **R590-132-4. Dissemination.**

Each insurer is instructed to distribute a copy of this rule or an equivalent summary to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

#### **R590-132-5. Penalties.**

Any licensee that violates this rule will be subject to the forfeiture provisions set forth in Section 31A-2-308 and 31A-23-216.

#### **R590-132-6. Confidentiality.**

Except as outlined in R590-132-3(D) above, all positive or indeterminate records of the applicant held by the licensee that refer to the HIV status shall be held as confidential records under restricted access and will not be re-released unless re-disclosure is specifically authorized by the applicant.

Re-release and Re-disclosure are required when the test results are to be used for purposes other than those included in the initial release.

#### **R590-132-7. Severability.**

If any provision of this rule or its application to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances shall not be affected.

**KEY: insurance law**

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[\[Back to Top\]](#)